

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STELLAR RECORDS, INC.,

Plaintiff,

v.

TIMOTHY FRANK,

Defendant.

ORDER

12-cv-366-bbc

In this copyright infringement case, plaintiff Stellar Records, Inc. contends that defendant Timothy Frank, proceeding without counsel, purchased unlicensed boot-leg copies of songs for which plaintiff owns the copyright. Now before the court is defendant's motion to dismiss plaintiff's complaint and to quash plaintiff's discovery requests, dkt. #7, as well as plaintiff's motion to strike defendant's motion as untimely. Dkt. #9.

I am denying both motions. In his motion to dismiss, defendant denies violating plaintiff's copyrights, contends that plaintiff cannot prove that he violated any copyrights and attaches documents to support his arguments. Such arguments are not proper in a motion to dismiss because they raise matters outside the pleading. Albany Bank & Trust Co. v. Exxon Mobil Corp., 310 F.3d 969, 971 (7th Cir. 2002) ("[M]atters outside the pleadings may not be considered on [Fed. R. Civ. P. 12(b)(6)] motion."). When a party raises matters outside the pleading, the court must convert the motion to one for summary judgment. Fed.

R. Civ. P. 12(d). However, under the pretrial conference order, the deadline for filing dispositive motions (motions for summary judgment) passed on February 1, 2013. Dkt. #6. Defendant filed his motion more than two months after that deadline. Therefore, if I converted the motion, it would be untimely.

Defendant also argues in his motion that the case should be dismissed for the same reasons that plaintiff's lawsuits were dismissed against defendants in Illinois. However, plaintiff does not develop this argument at all and does not even explain why plaintiff's claims were dismissed in the Illinois courts or why this case should have a similar outcome. I understand that defendant is proceeding pro se and that it can be difficult to articulate legal arguments, but defendant must do more than simply assert that plaintiff's complaint should be dismissed.

With respect to his objections regarding plaintiff's discovery requests, defendant contends that plaintiff's case constitutes harassment, that defendant has already provided information to plaintiff and that plaintiff has refused to discuss a reasonable time or place for a deposition. It is not entirely clear from defendant's arguments what specific discovery requests he is objecting to and what he wants the court to do. Is he asking the court to throw out the subpoena issued by plaintiff? Is he seeking a protective order to prevent plaintiff from obtaining certain evidence from him? In any event, defendant's motion provides no basis on which the court could grant relief to him. Therefore, I am denying defendant's motion in full. I am denying plaintiff's motion to strike as unnecessary.

ORDER

IT IS ORDERED that

1. Defendant Timothy Frank's motion to dismiss and for discovery relief, dkt. #7, is DENIED.

2. Plaintiff Stellar Records, Inc.'s motion to strike, dkt. #9, is DENIED as unnecessary.

Entered this 19th day of June, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge